

UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF
CALIFORNIA

Bagos v. City of Vallejo

No. 2:20-cv-00185-DAD-AC (E.D. Cal. Mar. 31, 2025) · No. 2:20-cv-00185-DAD-AC · Decided March 31, 2025

SUMMARY

This document is a stipulation and order in a federal civil rights action concerning a neuropsychological examination of Plaintiff Angel Bagos under Federal Rule of Civil Procedure 35. The parties set the examination terms, including its scope, duration, testing, recording restrictions, handling of raw data, and reporting requirements; the order was signed by Magistrate Judge Allison Claire on March 31, 2025.

CASE DETAILS

COURT	United States District Court for the Eastern District of California
WRITING FOR THE COURT	Allison Claire
DECIDED	March 31, 2025
DOCKET	2:20-cv-00185-DAD-AC
DISPOSITION	other
PROCEDURAL POSTURE	The parties submitted a stipulation concerning a neuropsychological examination of plaintiff under Federal Rule of Civil Procedure 35, and the court entered the stipulation as an order.
PRECEDENTIAL VALUE	nonprecedential
PARTIES	Angel Bagos v. City of Vallejo, Nickolas Sloan, Michael Jones, Does 1-50

TOPICS

- discovery dispute
- civil procedure
- guardian ad litem

PRACTICE AREAS

- civil procedure
- civil rights
- personal injury

QUESTIONS PRESENTED

1. Whether the court should approve and enforce the parties' stipulation governing defendants' neuropsychological examination of plaintiff under Federal Rule of Civil Procedure 35.
2. What procedures and restrictions should govern the examination, including testing, recording, access to raw data, confidentiality, and exchange of reports.

HOLDINGS

1. The court approved and ordered the parties' stipulation permitting defendants to conduct a neuropsychological examination of plaintiff under the specified conditions.
2. Upon request, defendants must provide plaintiff's counsel with Dr. Marreiro's written report containing the examination findings, diagnoses, conclusions, and test results, and plaintiff must provide like reports concerning examinations of the same condition. Requesting or obtaining the report, or deposing the examiner, waives applicable privilege concerning testimony about examinations of the same condition in the relevant controversy.

KEY QUOTATIONS

“WHEREAS, the parties have agreed that Defendants may conduct a neuropsychological examination of Plaintiff;” (at 1)

“Plaintiff has the right to terminate the proceeding and seek a protective order from the Court.” (at 6)

“Pursuant to FRCP 35(b), Defendants shall, on request, deliver a copy of Dr. Marreiro’s report to Plaintiff’s counsel.” (at 7)

FACTUAL BACKGROUND

Plaintiff Angel Bagos alleged a brain injury arising from his arrest. Defendants retained Catherine L. Marreiro, PhD, ABPP-CN, to conduct a neuropsychological examination addressing the nature and extent of plaintiff's injuries and their relationship to the incident. The parties stipulated to detailed procedures governing the examination, including its duration, permitted questioning, testing, recording, access to raw data, and exchange of reports.

PROCEDURAL HISTORY

Plaintiff alleged that he suffered a brain injury in connection with the arrest underlying the action. The parties agreed that defendants could conduct a neuropsychological examination and jointly submitted terms governing the examination, recording, testing data, confidentiality, and reports. Magistrate Judge Allison Claire ordered the stipulated examination terms on March 31, 2025.

DISPOSITION

other

CASES CITED

- Ragge v. MCA/Universal, 165 F.R.D. 605, 610 (C.D. Cal. 1995)
- Underwood v. Fitzgerald, 229 F.R.D. 548, 550 (M.D. Tenn. 2005)

OPINION

Bagos v. City of Vallejo

PER CURIAM.

1 VERONICA A.F. NEBB

City Attorney, SBN 140001

2 By: KATELYN M. KNIGHT

Assistant City Attorney, SBN 264573 3 CITY OF VALLEJO, City Hall 555 Santa Clara Street,
Third Floor 4 Vallejo, CA 94590 Tel: (707) 648-4545 5 Fax: (707) 648-4687 Email:
katelyn.knight@cityofvallejo.net 6 Attorneys for Defendants CITY OF VALLEJO,

7 MICHAEL JONES and NICKOLAS SLOAN

8 UNITED STATES DISTRICT COURT

9 EASTERN DISTRICT OF CALIFORNIA, SACRAMENTO DIVISION

10 ANGEL BAGOS, an individual, Case No. 2:20-cv-00185-DAD-AC 11 Plaintiff,
STIPULATION TO EXAMINATION

[FRCP 35]; [PROPOSED] ORDER

12 v. 13 CITY OF VALLEJO, a municipal corporation; NICKOLAS SLOAN in his individual
capacity 14 as a law enforcement officer for the CITY OF VALLEJO; MICHAEL JONES in his
15 individual capacity as a law enforcement officer for the CITY OF VALLEJO; and

16 DOES 1-50,

17 Defendants. 18

19 WHEREAS, Plaintiff ANGEL BAGOS has alleged a claim that Plaintiff suffered a brain 20
injury in connection with his arrest underlying this action; and 21 WHEREAS, the parties have
agreed that Defendants may conduct a neuropsychological 22 examination of Plaintiff; and 23
WHEREAS, Defendants have retained Catherine L. Marreiro, PhD, ABPP for the 24 purposes of
performing the examination; 25 IT IS HEREBY STIPULATED by and between Plaintiff ANGEL
BAGOS, by and 26 through his Guardian ad Litem JAMES BAGOS, and Defendants CITY OF
VALLEJO, 27 MICHAEL JONES, and NICKOLAS SLOAN, through their designated counsel,
that Plaintiff 1 Procedure as follows: 2 1. Said examination shall take place on April 25, 2025, at
9:00 a.m. and will be 3 conducted by Catherine Marreiro, PhD, ABPP-CN at the offices of Bay
Area Cognitive Health, 4 533 Airport Blvd, Suite 400, Burlingame, California 94010, Telephone
(650) 770-2224. The 5 examination may be rescheduled on reasonable notice by agreement of the
parties. 6 2. This examination will be conducted for the purpose of determining the nature and 7
extent of Plaintiff's physical injuries and the relationship thereof to the accident which is the 8
subject of this litigation. Dr. Marreiro shall conduct the examination of Plaintiff, which total 9
examination (from start to finish and including any written testing) may take up to 7 hours, not 10

including any reasonable and appropriate breaks or lunch Plaintiff may take as needed. The 11 exam involves history taking and observation of the Plaintiff to gather information in specific 12 areas. These areas shall include current complaints for which Plaintiff might seek care, and the 13 history of alleged injuries, including Plaintiff's subjective report of the events leading to injuries. 14 The examination will also gather information concerning the development of psychological and 15 physical symptoms, which treatments Plaintiff has received, and the effect of those treatments on 16 Plaintiff's symptoms. 17 3. The examination will gather important information about past psychological and 18 medical illnesses and difficulties, past behavioral difficulties, and educational and occupational 19 history. It will also gather important developmental information concerning the Plaintiff's 20 family of origin, including psychological, medical, and educational difficulties within her family, 21 and their educational background, work history, and social developmental history, including 22 information about marriages and children. Simultaneous with the first part of the examination, 23 Dr. Marreiro will make observations and inquiries necessary for a mental status evaluation of the 24 Plaintiff, including Plaintiff's moods, thought processes, and thought content. 25 4. Plaintiff will not be questioned concerning conversations with counsel, or any 26 person affiliated with counsel or counsel's offices, counsel's evaluation of any of Plaintiff's 27 claims against any of the Defendants, nor is Plaintiff to be questioned about any discussions 1 client and attorney work product privileges. 2 5. In conjunction with the interview and information gathering, the examination will 3 include a series of standardized and validated psychological and neuropsychological tests. The 4 tests are not duplicative of the examination interview and are accepted by the psychological and 5 neuropsychological community as useful for an informed and objective opinion as to the cause, 6 nature, and degree of emotional distress and cognitive dysfunction being claimed by the Plaintiff. 7 The parties agree that the test battery Dr. Marreiro uses is flexible and, to some extent, depends 8 on the nature of symptoms presented. As a consequence, the following list of anticipated tests is 9 provisional, with some omissions or substitutions likely: 10 A4/17/2025CS-Test of Premorbid Functioning 11 Delis-Kaplan Executive Function System (subtests) 12 Wechsler Adult Intelligence Scale IV 13 Wechsler Memory Scale IV (subtests) 14 Wide Range Assessment of Memory and Learning, 3rd Edition (subtests) 15 B-Test 16 Brief Visuospatial Memory Test – Revised 17 Brown Location Test 18 Conners Continuous Performance Test – 3 or Test of Variable Attention 19 Dot Counting 20 Boston Naming Test 21 NAB Naming Test 22 Controlled Oral Word Association Test 23 Animal Naming test 24 Repetition of phrases task 25 Victoria Symptom Validity Test 26 Rey Auditory Verbal Learning Test OR California Verbal Learning Test – 27 II or III 1 Victoria Stroop Test 2 Word Choice Test 3 Stroop Color Word Test (Golden) 4 TOMM 5 Ruff Figural Fluency Test 6 Rey Figure Copy 7 Wisconsin Card Sorting Test – CV OR Wisconsin Card Sorting Test OR 8 Wisconsin Card Sorting Test – 64 9 Grooved Pegboard Test 10 Wide Range Achievement Test – Fifth Edition 11 Woodcock Johnson Tests of

Achievement – 4th Edition (subtests) 12 Minnesota Multiphasic Personality Inventory- 3rd Edition OR Minnesota 13 Multiphasic Personality Inventory-2-Restructured Format (MMPI-2-RF) Or 14 Personality Assessment Inventory (PAI) 15 Trauma Symptom Inventory – 2 16 Word Memory Test 17 6. At the conclusion of any testing of Plaintiff by Dr. Marreiro, a copy of “raw data” 18 generated by the exam and all test results regarding Plaintiff shall be exchanged simultaneously 19 with Plaintiff’s neuropsychological expert only. With respect to the raw data generated and all 20 test results regarding Plaintiff (hereinafter “Data”), the parties agree to the following: 21 Access to “raw data” created in the testing is limited to, and shall be 22 exchanged only, between licensed neuropsychologists retained by the 23 parties, and shall not be shared with counsel, or other experts. 24 Use of Data is limited to only that which is required for the resolution of 25 the pending action; 26 “Raw Data” defined above, is subject to the terms of this Stipulation and 27 may be used only for limited purposes in connection with this action; 1 Defendants’ counsel’s possession will be destroyed, along with all copies 2 thereof, save the Data in possession of Dr. Marreiro (not including Dr. 3 Marreiro’s formal written report) and 4

The parties shall seek to seal the record to the extent any portion of non- 5 privileged Data are disclosed in pleadings, testimony, exhibits, or other 6 documents which would otherwise be available for public inspection. 7 All “raw data”, and test results generated by Plaintiff’s neuro- psych experts 8 in this action, when completed, shall be delivered directly to Dr. Marreiro 9 via email. All reports generated from this testing shall be provided to 10 Defense counsel pursuant to Federal Rule of Civil Procedure 35(b). 11 7. Dr. Marreiro will review her consent form with Plaintiff who will be asked to sign 12 the consent following review of the content with Dr. Marreiro. The consent form shall be 13 provided to Plaintiff’s counsel in advance. The consent form outlines the purpose of the 14 evaluation, the lack of a doctor-patient relationship, lack of direct feedback from Dr. Marreiro 15 regarding results, retaining party (responsible for payment and recipient of results/report), and 16 limits of confidentiality (e.g., disclosure of abuse/neglect of children or vulnerable adults, 17 disclosure of imminent risk of suicide/harm to others). 18 8. Plaintiff shall be entitled to take reasonable breaks during the examination 19 process, including, but not limited to taking a lunch break, rest breaks and bathroom breaks. If at 20 any time during the proceedings, Plaintiff feels in reasonable good faith that the proceeding has 21 become abusive, Plaintiff will immediately notify counsel or other designated representative in 22 order to try to resolve the matter at that time. Plaintiff has the right to terminate the proceeding 23 and seek a protective order from the Court. If the parties are unable to resolve the issue, should 24 the Court order that the examination be reconvened, Defendants will have up to 8 hours, 25 including prior time spent and not including reasonable and appropriate breaks and lunch, to 26 complete the examination originally ordered by the Court, but not any additional time. 27 9. No invasive or painful procedures will be utilized. This evaluation will be 1 *Ragge v. MCA/Universal*, 165 F.R.D. 605, 610 (C.D. Cal. 1995) and *Underwood v. Fitzgerald*, 2 229 F.R.D. 548, 550 (M.D. Tenn. 2005), the parties have stipulated that no videotaping or third- 3 party observation (by any person,

including but not limited to, attorneys and court reporters) will be allowed in connection with the examination. Dr. Marreiro will audio record the interview portion of the exam. Plaintiff may also audio record the interview. If Plaintiff does not audio record the interview portion on her own, Dr. Marreiro will provide access to this recording to counsel for Plaintiff upon request. Dr. Marreiro will accommodate all reasonable requests to accomplish this recording, including, but not limited to, taking any necessary breaks during the examination, taking a break if technical difficulties arise, and making available all other reasonable accommodations to allow the effective recording of the defense mental examination. 10. Defendants are to immediately transmit a copy of this Stipulation and Order to Dr. Marreiro to promptly advise her that she must comply with the Order, and by proceeding with the examination, Dr. Marreiro will be deemed to have consented to its terms and to have consented to this court asserting jurisdiction over her to enforce this order. Pursuant to FRCP 35(b), Defendants shall, on request, deliver a copy of Dr. Marreiro's report to Plaintiff's counsel. Dr. Marreiro's report shall be in writing and shall set forth in detail all findings, diagnoses, conclusions, and the results of any tests. Defendants are entitled to receive and Plaintiff shall provide any like reports of earlier or later examinations of the same condition. By requesting and obtaining the examiner's report, or by deposing the examiner, the Plaintiff waives any privilege it may have—in that action or any other action involving the same controversy—concerning testimony about all examinations of the same condition. SO STIPULATED. } Dated: March 24, 2025 LAW OFFICES OF

KENNETH CHIKE ODIWE, PC

/s/ K. Chike Odiwe (as authorized on 03/24/2025)

K. CHIKE ODIWE

Attorney for Plaintiff ANGEL BAGOS] Dated: March 25, 2025 /s/ Katelyn M. Knight

KATELYN M. KNIGHT

Assistant City Attorney Attorney for Defendants CITY OF VALLEJO,

MICHAEL JONES and NICKOLAS SLOAN

SO ORDERED

DATED: March 31, 2025 Ct.ear,— Chore

ALLISON CLAIRE

UNITED STATES MAGISTRATE JUDGE

22 23 24 25 26 27 28

7 STIPULATION FOR BY AMINATION